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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 IN RE: METHYL TERTIARY BUTYL
ETHER ("MTBE") PRODUCTS
LIABILITY LITIGATION

00 MDL 1358
Master File C.A.
No. 1:00-1898 (SAS)

5 -----x
6 CARL MORGAN, et al.,

7 Plaintiffs,

8 v.

05 CV 10259 (SAS)

9 EXXON MOBIL,

10 Defendant.

11 -----x

12 New York, N.Y.
13 April 13, 2011
3:00 p.m.

14 Before:

15 HON. SHIRA A. SCHEINDLIN

16 District Judge

17
18 APPEARANCES
(via speakerphone)

19 NOLAN, PLUMHOFF & WILLIAMS, LTD.
20 Attorneys for Plaintiff
21 BY: ROBERT L. HANLEY, JR., ESQ.

22 VENABLE, BAETJER, HOWARD & CIVILETTI, L.L.P.
Attorneys for Defendant
23 BY: ANDREW GENDRON, ESQ.
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1 (In chambers)

2 THE COURT: Hello?

3 MR. HANLEY: Good afternoon, your Honor.

4 THE COURT: Is this Mr. Hanley?

5 MR. HANLEY: Yes, it is, your Honor.

6 THE COURT: All right. And Mr. Gendron?

7 MR. GENDRON: Yes, your Honor. Good afternoon.

8 THE COURT: Good afternoon. And I have a court
9 reporter here, so you're on the record.

10 I received a letter from Mr. Hanley dated April 7, and
11 he says in the letter that this is a joint request between the
12 plaintiff and the defendant, Exxon Mobile, to remand this case
13 to Maryland, and the reason why is, this involves 15 properties
14 and 17 plaintiffs, all who maintain private domestic wells.
15 There are no allegations of contamination of any community well
16 or a well utilized to provide water for municipalities. So the
17 discovery is all local. And the depositions and expert reports
18 are going to be unique to this specific location. And Exxon
19 has already produced documents. And plaintiff's counsel has
20 not participated in the MDL discovery. And so that's it.

21 Now, the problem is that I don't know how the case got
22 to the MDL in the first place. Was it filed -- it was probably
23 filed in the U.S. District Court in Maryland. Because that's
24 where you want to remand it to. And what happened then?

25 MR. HANLEY: Well, it was initially filed in the state

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1 court, your Honor.

2 THE COURT: OK.

3 MR. HANLEY: It was removed to federal district court
4 in Maryland.

5 THE COURT: By the way, is this Mr. Hanley speaking?

6 MR. HANLEY: Yes, I'm sorry. It is.

7 THE COURT: OK. Go ahead. So then it was removed to
8 the federal --

9 MR. HANLEY: After the removal, it was -- they filed a
10 motion. It's a tag-along.

11 THE COURT: Wait a minute, wait, Mr. Hanley, "they"
12 filed a motion. Who's "they"?

13 MR. HANLEY: Exxon, the tag-along action.

14 THE COURT: They filled that motion with the MDL
15 panel?

16 MR. HANLEY: Correct.

17 THE COURT: OK. Go ahead.

18 MR. HANLEY: And then, you know, we opposed the
19 conditional transfer order.

20 THE COURT: Right.

21 MR. HANLEY: And the MDL denied our opposition or
22 rejected our opposition. And then we were in the MDL. And
23 then for a period of time your Honor had stayed all cases
24 except the four focus cases at that time.

25 THE COURT: Right. Then long ago I lifted that stay.

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1 MR. HANLEY: Yes. It was a long time ago. You know,
2 in essence, most of the discovery that was going on up there
3 really didn't pertain to our case. In addition, there had been
4 another case that had been up before your Honor, another
5 Maryland case.

6 THE COURT: Right.

7 MR. HANLEY: It went back to the state court in
8 Maryland.

9 THE COURT: That's right. Because there was no more
10 federal jurisdiction.

11 MR. HANLEY: It has since been tried. We're appealing
12 now.

13 THE COURT: Great.

14 MR. GENDRON: Excuse me, Mr. Hanley. That is not
15 correct that it is appealing in Maryland.

16 Pardon me, your Honor.

17 THE COURT: That's OK.

18 MR. HANLEY: There was another case, again, that,
19 after the decision came out about federal jurisdiction, this
20 was also handed back. And that is the subject of a class
21 action lawsuit that has not been tried in Maryland yet.

22 THE COURT: Right.

23 MR. HANLEY: So that case, the class action case,
24 involves the same station which my clients are running.
25 There's a ton of discovery going on in Maryland, you know,

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1 about -- additionally, the Maryland environmental authorities
2 have been involved with that station. So there is a wealth of
3 documents and discovery that had been obtained from MDE in
4 terms of documents.

5 THE COURT: Right. I guess my only hesitation,
6 because I know this is a joint request, is essentially, it
7 sounds a little bit like an end run around the MDL panel.
8 Because when you opposed the transfer, you must have made many
9 similar arguments. And the panel said, no, we reject your
10 argument, this goes to the MDL.

11 Now, I would understand if you wrote, both wrote
12 together and said, we've completed all the discovery so it
13 should be remanded to the transferor court for trial.
14 Otherwise I'm not really supposed to remand things that the
15 panel has sent to me until discovery is complete and they're
16 ready to go to trial. You can't say that yet, though, right?
17 You can't say that your discovery is complete.

18 MR. HANLEY: Yes. We have not taken the depositions
19 in the case. That's correct.

20 THE COURT: Right. So since the MDL panel transferred
21 it, having overruled your objections, shouldn't you just get
22 your discovery done, and then when you can jointly represent to
23 this Court that the pretrial phase is over and it's ready to be
24 tried and should be remanded to the transferor case. Then,
25 like every other case, I would remand it.

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1 In other words, I'm reluctant to overrule the MDL
2 panel, which is really what you're both asking me to do,
3 because they chose to transfer it here for all pretrial
4 proceedings. Now, if you want to dismiss it in favor of the
5 class action, that's up to you. But I assume you don't.

6 MR. HANLEY: No.

7 THE COURT: No. So why don't you just get the
8 discovery finished. What does it matter which court you're in
9 to do such things as notice depositions and take them and
10 finish up and get ready for trial?

11 MR. HANLEY: Well, it's certainly, you know, we could
12 do it that way.

13 THE COURT: Well, you could, because that's the way I
14 think I should be handling it, once they determine to transfer
15 it. If you have been successful in your opposition to
16 tag-along transfer, that's fine. I wouldn't have cared at all
17 if it remained in Maryland. But once the panel rejected your
18 objections and sent it here, I guess I feel it's my obligation
19 to see it through to pretrial phase and then remand.

20 And, you know, this has come up in other cases where,
21 after the discovery is finished in a local case, there's been a
22 question, for example, on summary judgment, which court should
23 hear the summary judgment. That just came up in the Orange
24 County Water District case. And it turns there on whether the
25 issue in the summary judgment is entirely local and won't

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1 affect any of the other, you know, hundred cases in the MDL or
2 whether it raises an issue that's common. And that's one
3 reason to complete discovery here, so that the rulings can be
4 consistent, both with respect to discovery of Exxon
5 materials -- Exxon is obviously here all the time -- and then
6 to make sure that some of the issues that are raised in summary
7 judgment are not common issues throughout the MDL but are,
8 rather, local issues in Maryland.

9 So it seems premature. Even though I understand you
10 both agree and I usually try to respect that, it still seems to
11 me to be an end run around the MDL decision.

12 So I would say, if you want to separately propose a
13 discovery schedule that wraps up your discovery quickly and
14 tees it up for either a motion or a remand for trial, I'm happy
15 to accommodate you, but not by just going along with your
16 letter.

17 MR. HANLEY: I guess the only purpose of my letter
18 was, it seemed that my case was unique in terms of, you know,
19 just being individuals.

20 THE COURT: No. I perfect -- no, you don't
21 understand. If I were hearing this application in the first
22 instance, so to speak, I might have chosen to remand. But you
23 made those arguments to the MDL when you opposed transfer. And
24 they rejected them. You must have said then, my case is
25 unique, it's private wells, it's local.

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1 MR. HANLEY: I did. In fact, I pulled arguments out
2 of my opposition that sort of made their way into my letter to
3 your Honor.

4 THE COURT: Right. Exactly. And so I'm not being at
5 all disrespectful. I would have liked to have gone along. But
6 I was troubled by the fact that the MDL said, no, no, send this
7 to the same judge and let her supervise the pretrial work and
8 remand it for trial. That's the way the statute envisions it
9 under 1407 or -- is it -- but in any event, the MDL statute.

10 So I don't feel right sending it back until you're
11 ready for trial. I may send it back for the dispositive
12 motions, if there are any, once they are outlined to me and I
13 see if they raise common issues that affect the entire MDL or
14 whether they're really completely local, like whether some well
15 is downgradient of another well or that kind of thing. That
16 goes back to Maryland.

17 So I can't tell you. So why don't you propose with
18 each other a discovery schedule that sees you through
19 discovery, and the quicker you're done, the quicker you're out
20 of here, and you'll be happy.

21 MR. HANLEY: Very well. I will have that discussion
22 with Mr. Gendron, your Honor.

23 THE COURT: Excellent. Well, he's here all time, so I
24 know he'll be accommodating and work with you. Right,
25 Mr. Gendron?

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1 MR. GENDRON: Of course, your Honor.

2 THE COURT: OK. So the two of you work quickly to get
3 together a discovery schedule. Why don't you submit it as a
4 proposed order. I'll so-order it. Offer you go. Finish up
5 your discovery, see if there's motion practice or not, and
6 we'll try to get this back to Maryland as fast as possible.

7 And if either of you want a record, I do have a record
8 of this, OK?

9 MR. HANLEY: Thanks, your Honor.

10 THE COURT: Thank you. I'm sorry. Bye-bye.

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